Selvaraju a/l Ponniah lwn Suruhanjaya Perkhidmatan Awam, Malaysia dan satu lagi

MAHKAMAH RAYUAN (PUTRAJAYA) — RAYUAN SIVIL NO W–01–27 TAHUN 1999
ABDUL AZIZ MOHAMAD, ALAUDDIN HHMR AND RAUS SHARIF H
3 MARCH 2006

Acara Sivil — Res judicata — Saman dalam kamar — Sama ada isu had masa yang pernah dibangkitkan dalam saman dalam kamar terdahulu adalah res judicata dalam tindakan kemudian

Had Masa — Akta Perlindungan Pihak Berkuasa Awam — Sama ada tindakan disekat had masa — Sama ada permohonan untuk deklarasi bahawa pemecatan adalah tidak sah telah disekat oleh had masa — Pengiraan masa mula berjalan — Akta Perlindungan Pihak Berkuasa Awam 1948 s 2(a)

Undang-Undang Pentadbiran — Hak dan liabiliti pegawai awam — Pemecatan — Perintah tahanan terhadap perayu mengakibatkan pemecatannya — Sama ada Ketua Jabatan atau Lembaga Tatatertib mempunyai kuasa atau tugas untuk mengkaji sama ada perintah tahanan terhadap perayu adalah sah ataupun tidak — Sama ada perayu mempunyai hak untuk didengar sebelum dipecat — Sama ada perayu berhak mengetahui sebab keputusan responden — Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980

Undang-Undang Pentadbiran — Hak dan liabiliti pegawai awam — Pemecatan — Perintah tahanan terhadap perayu mengakibatkan pemecatannya — Sama ada perayu boleh mencabar kesahan perintah tahanan dalam prosiding pemecatannya — Sama ada tindakan perayu adalah penyalahgunaan proses mahkamah — Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 perintah am 34 & 35

Perayu adalah seorang pemandu dalam perkhidmatan kerajaan. Pada 5 Ogos 1991, perayu telah ditahan di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan tersebut'). Pada 28 Ogos 1991, Lembaga Tatatertib Perkhidmatan Awam telah menggantung perkhidmatan perayu sebagaimana yang diperuntukkan di dalam Perintah Am 34(2) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 ('Perintah-Perintah tersebut'). Di dalam mesyuaratnya pada 6 Julai 1992 Lembaga Tatatertib yang sama setelah menimbangkan dengan teliti dokumen-dokumen serta maklumat-maklumat yang berkaitan, memutuskan bahawa perayu dikenakan hukuman Buang Kerja mengikut Perintah Am 36(i) Perintah-Perintah tersebut. Perayu telah diberitahu tentang perkara ini melalui surat bertarikh 16 Julai 1992. Perayu telah membuat rayuan kepada Lembaga Rayuan Tatatertib Perkhidmatan Awam Kumpulan 'D' Suruhanjaya Perkhidmatan Awam (responden pertama) melalui suratnya bertarikh 26 Julai 1992 terhadap keputusan Lembaga Tatatertib tersebut. Pada 19 Oktober

1992, Lembaga Rayuan Tatatertib telah menolak rayuan perayu. Perkara ini diberitahu kepada beliau melalui surat bertarikh 26 November 1992. Perayu pada 25 November 1995 telah menuntut terhadap responden-responden untuk deklarasi bahawa pemecatannya adalah batal dan tidak sah.

Perayu berhujah bahawa penggantungan dan pemecatannya adalah tidak sah kerana ianya didasarkan kepada satu Perintah Tahanan yang sendirinya tidak sah dari segi undang-undang. Di akhir perbicaraan, Yang Arif Hakim Mahkamah Tinggi telah menolak tuntutan perayu dengan kos (lihat *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* take u[1999] 5 MLJ 678). Justeru, perayu merayu kepada Mahkamah ini terhadap keputusan tersebut. Peguam perayu menyatakan bahawa: (1) Hakim itu telah tersalaharah apabila beliau memutuskan yang perayu adalah disekat oleh had masa. Yang Arif Hakim terkhilaf apabila tidak mengambil kira bahawa perayu hanya diberitahu melalui surat bertarikh 26 November 1992 yang rayuannya ditolak. Pemfailan guamannya pada 25 November 1995 dikatakan berlaku dalam tempoh had masa dan ianya sah; (2) isu had masa yang dibangkitkan responden di dalam tindakan ini merupakan res judicata kerana perkara yang sama telahpun dibangkitkan oleh responden di dalam saman dalam kamar mereka bertarikh 11 Jun 1995 yang difailkan bagi tujuan membatalkan tuntutan perayu di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980. Persoalan pokok ialah mengenai kesahan perintah tahanan itu dan isu had masa.

Diputuskan, menolak rayuan dengan kos:

(1) (oleh **Alauddin HMR**) Perintah Am 34 dan 35 memperuntukkan Ketua Jabatan, Lembaga Tatatertib ataupun Lembaga Rayuan Tatatertib mempunyai tanggungjawab 'statutory' untuk menerima seadanya Perintah Tahanan yang dimaksudkan. Mereka tidak ada kuasa atau tugas untuk mengkaji sama ada Perintah Tahanan tersebut sah ataupun tidak. Tugas Ketua Jabatan dan Lembaga Tatatertib adalah mengambil tindakan tatatertib sebaik sahaja mengetahui wujudnya suatu Perintah Tahanan. Semasa perintah pembuangan kerja perayu dibuat iaitu pada 19 Oktober 1992, Perintah Tahanan tersebut masih berkuatkuasa (5 Ogos 1991 hingga 4 Ogos 1993) dan belum dibatalkan. Jadi tindakan Ketua Jabatan dan Lembaga Tatatertib di bawah peruntukan-peruntukan tersebut di atas adalah tepat dan betul dan tidak boleh dipertikaikan (lihat perenggan 25).

(2) (oleh **Alauddin HMR**) Sekiranya perayu berhajat atau ingin mempertikaikan kesahan Perintah Tahanan tersebut maka beliau perlu mengambil tindakan yang sewajarnya di Mahkamah Tinggi sebelum mengambil tindakan ini. Hanya Mahkamah Tinggi mempunyai kuasa atas permohonan untuk memutuskan kesahan Perintah Tahanan tersebut bukannya Lembaga Tatatertib ataupun Lembaga Rayuan Tatatertib yang bertindak mengikut kehendak Perintah-Perintah tersebut. Apabila kesahan Perintah Tahanan dicabar orang yang sepatutnya dinamakan sebagai responden ialah Timbalan Menteri Dalam Negeri dan bukannya Suruhanjaya Perkhidmatan Awam (lihat perenggan 26).

(3) (oleh **Alauddin HMR**) Tindakan pembuangan kerja yang diambil oleh Lembaga Tatatertib terhadap perayu adalah dibuat mengikut Perintah Am 34 dan 35 Perintah-Perintah tersebut yang diklasifikasikan sebagai 'Part III —

A Special Provisions' di mana perayu atau mana-mana pegawai dalam keadaan yang sama, tidak mempunyai 'right of being heard'. Perkara ini jelas diperuntukkan oleh Artikel 135(2)(d) Perlembagaan Persekutuan (lihat perenggan 28).

B (4) (oleh **Alauddin HMR**) Tindakan yang diambil oleh perayu di dalam kes ini adalah tidak sesuai dan merupakan penyalahgunaan proses Mahkamah. Disebabkan kegagalan perayu mencabar kesahan Perintah Tahanan tersebut kerana beliau disekat oleh had masa seperti yang dinyatakan dalam s 2(a) Public Authorities Protection Act 1948 ('PAPA 1948'), maka perayu secara berselindung cuba menjadikan tindakan yang sebenarnya mempertikaikan perintah pembuangan kerja, sebagai satu wadah bagi tujuan mencapai hasrat asalnya yakni mempertikaikan kesahan Perintah Tahanan tersebut. Maka, perbuatan perayu ini sebagai penyalahgunaan proses mahkamah (lihat perenggan 30).

C

D (5) (oleh **Alauddin HMR**) Undang-Undang PAPA 1948 khususnya s 2(a) jelas menghadkan prosiding terhadap Kerajaan kepada 36 bulan 'next after the act, neglect, or default complained of'. Selepas masa tersebut Kerajaan Malaysia telah memperolehi satu hak statutori sebagai pembelaan mutlak. Peruntukan s 2(a) tersebut amat jelas dan tidak memperuntukkan budi bicara Mahkamah kerana ianya bersifat mandatori (lihat perenggan 32).

E (6) (oleh **Alauddin HMR**) Perintah Tahanan itu dibuat pada 5 Ogos 1991 dan masa luput pada 4 Ogos 1994. Keputusan menolak rayuan dibuat pada 19 Oktober 1992 dan masa luput pada 18 Oktober 1995. Manakala tindakan perayu difailkan pada 25 November 1995. Jelas di sini bahawa terdapat kelewatan selama lebih kurang 15 bulan 20 hari dari tarikh 4 Ogos 1994. Dalam keadaan kes ini jelas tindakan perayu disekat oleh had masa (lihat

F perenggan 33).

(7) (oleh **Alauddin HMR)**) Isu had masa yang ditimbulkan dalam saman dalam kamar responden adalah berkaitan soal bilakah masa mula berjalan bagi keputusan buang kerja. Adakah ia bermula dan tarikh keputusan dibuat iaitu 19 Oktober 1992 atau dari tarikh surat Lembaga Rayuan yang memaklumkan keputusan tersebut iaitu 26 November 1992. Tetapi permohonan responden ini ditolak oleh penolong kanan pendaftar. Ini bermakna ianya tidak berakhir di situ tetapi isu itu hendaklah dibicarakan. Isu bila masa berjalan untuk perintah tahanan dicabar masih terbuka. Jadi soal res judicata tidak timbul (lihat perenggan 36).

G

H (8) (oleh **Alauddin HMR**) Undang-undang atau statut tidak memperuntukkan tanggungjawab atas responden-responden memberi sebab berhubung keputusan mereka (lihat perenggan 37); *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 diikut.

I (9) (per **Abdul Aziz JCA**) The appellant could not challenge the validity of the detention order through the dismissal action that he brought. In the first place the action was not framed as an action to challenge the validity of the detention order, there being no prayer for a declaration that the detention order was null and void and the Deputy Minister not being made a party. In the second place, and as the overriding consideration, challenging the validity of the detention

order in the action was an abuse of the process of the court because the appellant had failed to do so within the three years allowed by s 2(a) of the PAPA 1948 (see para 44). It was therefore an abuse of process to attempt to nullify the detention order through the dismissal action (see para 45).

(10) (per **Abdul Aziz JCA**) Counsel submitted that the period of limitation to bar the action as an action against the decision of the disciplinary authority must be reckoned from a date connected with the decision. To him the date should be 26 November 1992, the date of the letter informing of the dismissal of the appellant's appeal and not 19 October 1992, the date of the decision. However, which of the two dates is correct was not a question that called for a decision in the appeal because the senior federal counsel did not seek to support the finding of the judge on the question of limitation or to argue in support of the defence of limitation in para 8 of the statement of defence. That defence appeared to have been a dead issue ever since the respondents failed in their application to have the action struck out by reason of limitation. The senior federal counsel began his submission in the appeal by accepting, after hearing the submission for the appellant, that the appeal concerned only one issue, whether the validity of the detention order could be challenged in the action (see para 50).

[English summary

The appellant is a driver in the government service. On 5 August 1991, the appellant was arrested under s 4(1) of the Emergency (Public Order And Prevention of Crime) Ordinance 1969. On 28 August 1991, the Disciplinary Board of Public Service suspended the appellant's service as provided in the general order 34(2) General Order of the Public Officer (Behaviour and Conduct) (Chapter 'D') 1980 ('the said Order'). At the meeting on 6 July 1992, the similar Disciplinary Board considered carefully the documents and relevant information, decided that the appellant was dismissed from work according to the general order 36(i) of the said Order. The appellant was told about this via letter dated 16 July 1992. The appellant appealed to the Disciplinary Board of the Public Service Group 'D' Public Service Commissioner (first respondent) via letter dated 26 July 1992 against the decision of the said Disciplinary Board. On 19 October 1992, the Appeal Disciplinary Board rejected the appellant's appeal. This matter was told to the appellant via letter dated 26 November 1992. The appellant on, 25 November 1995 demanded from the respondent a declaration that his dismissal was invalid.

The appellant submitted that the suspension and dismissal was invalid because it was based on a detention order which alone was not valid from the point of law. At the end of the trial, the High Court judge rejected the appellant's demand with cost (see *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* [1999] 5 MLJ 678). Further, the appellant appealed to this court against the said decision. The appellant's solicitor stated that: (1) the judge misdirected himself when he decided that the appellant was limited by time. The judge erred when failed to take into account that the appellant was only told that via letter dated 26 November 1992 that his appeal was rejected. The filing suit on 25 November 1995 was said to have taken place within the required limited time and it was valid; (2) the issued limited time raised by the respondent in their summons in chambers dated 11 June 1995 which

was filed to strike out the appellant's claim under O 18 r 19 of the Rules of the High Court 1980. The question is the legitimacy of the detention order and the issue of limited time.]

Held, appeal dismissed with costs:

(1) (per **Alauddin JCA**) General order 34 and 35 provides that the Chief of Department, the Disciplinary Board or the Disciplinary Appeal Board have a 'statutory' responsibility to accept the detention order meant. They do not have the power or duty to analyse whether the said detention order is valid or not. The duty of the chief of department and the Disciplinary Board is to take up disciplinary action soon after being notified of the existence of the detention order. When the appellant's dismissal order was made on 19 October 1992, the said detention order was still enforceable (5 August 19991 till 4 August 1993) and not yet cancelled. So, the action of the chief of department and the Disciplinary Board under the provisions above is on point, correct and cannot be disputed (see para 25).

(2) (per **Alauddin JCA**) If the appellant intend to dispute the legitimacy of the detention order, therefore he has to execute the right action at the High Court before taking up this action. Only the High Court has the power over the application to decide the legitimacy of the said detention order and not the Disciplinary Board and the Disciplinary Appeal Borad which acts according to the said Orders. When the legitimacy of the detention order was challenged, the person whom should be named as the respondent is the Deputy Minister of Home Affairs and not Public Service Commission (see para 26).

(3) (per **Alauddin JCA**) The dismissal of the appellant by the Disciplinary Board is in accordance with the general orders 34 and 35 of the said Order which is classified as 'Part III — Special Provisions' whereby the appellant or whichever of the officer in the similar circumstances does not have the 'right of being heard'. This matter is clearly provided in the art 135(2)(d) of the Federal Constitution (see para 28).

(4) (per **Alauddin JCA**) The act by the appellant in this case is not appropriate and is an abuse of the court process. Due to the appellant's failure in challenging the legitimacy of the detention order because of the fact that the appellant was limited by time as stated in s 2(a) of the Public Authorities Protection Act 1948 ('PAPA'), the appellant impliedly tried to make the actual act of disputing the dismissal order as a reason to achieve his initial intention but at the same time disputing the legitimacy of the said detention order. Therefore, the appellant's action is a dispute of the court process (see para 30).

(5) (per **Alauddin JCA**) The Public Authorities Protection Act 1948, specifically s 2(a) clearly limits the proceeding against the Government to 36 months 'next after the act, neglect or default complained of'. After the said time, the Government of Malaysia obtained a statutory right as absolute defence. The said provision 2(a) is very clear and does not require the discretion of the court because it is mandatory (see para 32).

(6) (per **Alauddin JCA**) The detention order was made on 5 August 1991 and expired on 4 August 1994. The decision to turn down the appeal was made on 19 October 1992 and it expired on 18 October 1995. Whereas the appellant's action was filed on 25 November 1995. Clearly, there was delay for about 15 months 20 days from 4 August 1994. In such circumstance, clearly the appellant's action was limited by time (see para 33).

(7) (per **Alauddin JCA**) The limited time raised in the respondent's summons in chambers is closely related to the question as to when time begins to run for the dismissal of the job. Whether it begins from the date of the said decision which is 26 November 1992. But the respondent's application was rejected by the senior assistant registrar. This means it does not end there but that issue must be disputed. The issue as to when the time runs for the detention order was challenged and still open. So, the issue of res judicata does not arise (see para 36).

(8) (per **Alauddin JCA**) The law or the statues do not provide responsibility over the respondents giving reasons as regards their decision (see para 37). *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 followed.

(9) (oleh **Abdul Aziz HMR**) Perayu tidak mencabar kesahan perintah penahanan itu melalui penolakan tindakan yang beliau mulakan. Pertama sekali, tindakan tersebut tidak dibentuk sebagai satu tindakan untuk mencabar kesahan perintah penahanan, memandangkan tiada permohonan untuk satu deklarasi bahawa perintah penahanan adalah terbatal dan tidak sah dan Timbalan Menteri tidak dijadikan satu pihak. Keduanya, dan sebagai pertimbangan utama, mencabar kesahan perintah penahanan dalam tindakan tersebut merupakan satu penyalahgunaan proses mahkamah kerana perayu telah gagal untuk berbuat demikian dalam tempoh tiga tahun yang dibenarkan oleh s 2(a) PAPA 1948 (lihat perenggan 44). Oleh itu ia satu penyalahgunaan proses untuk cuba membatalkan perintah penahanan itu melalui tindakan pemecatan (lihat perenggan 45).

(10) (oleh **Abdul Aziz HMR**) Peguam berhujah bahawa tempoh had masa untuk membatas tindakan tersebut sebagai satu tindakan terhadap keputusan pihak berkuasa tatatertib hendaklah dikira daripada tarikh yang berkaitan dengan keputusan itu. Kepada beliau tarikh itu adalah 26 November 1992, tarikh surat yang memaklumkan tentang penolakan rayuan perayu dan bukan 19 Oktober 1992, tarikh keputusan itu. Namun, manakah antara kedua-dua tarikh itu adalah betul bukan persoalan yang memerlukan keputusan dalam rayuan tersebut kerana peguam kanan persekutuan tidak ingin menyokong penemuan hakim berhubung persoalan had masa atau berhujah untuk menyokong pembelaan had masa dalam perenggan 8 penyataan pembelaan. Pembelaan itu bukan merupakan satu persoalan lagi memandangkan responden-responden gagal dalam permohonan mereka untuk membatalkan tindakan itu atas sebab had masa. Peguam kanan persekutuan memulakan hujah beliau dalam rayuan tersebut dengan menerima, setelah mendengar hujah bagi pihak perayu, bahawa rayuan tersebut hanya berkaitan satu persoalan, sama ada kesahan perintah penahanan boleh dicabar dalam tindakan tersebut (lihat perenggan 50).

Nota-nota

Untuk kes-kes mengenai pemecatan pegawai awam, lihat 1 *Mallal's Digest* (4th Ed, 2005 Reissue) perenggan-perenggan 780–786.

Untuk kes–kes mengenai sama ada tindakan disekat had masa di bawah Akta Perlindungan Pihak Berkuasa Awam 1948, lihat 9 *Mallal's Digest* (4th Ed, 2002 Reissue) perenggan-perenggan 2317–2320.

Untuk kes mengenai saman dalam kamar, lihat 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index perenggan 5441.

Kes-kes yang dirujuk

Alias bin Ismail v Hairuddin bin Mohamad & Anor [1997] 3 MLJ 724 (dirujuk)

Ghazi bin Mohd Saufi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114 (dirujuk)

Ng Hock Cheng v Pengarah Am Penjara & Ors [1998] 1 MLJ 153 (dirujuk)

Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan [2002] 3 MLJ 72 (diikut)

Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor [1999] 5 MLJ 678 (dirujuk)

Undang-undang yang dirujuk

Akta Perlindungan Pihak Berkuasa Awam 1948 s 2(a)

Kaedah-Kaedah Mahkamah Tinggi 1980 A 18 k 19

Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 s 4(1)

Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 perintah am 34(2), 35, 36(i)

Peraturan-Peraturan Lembaga Tatatertib Perkhidmatan Awam 1972 peraturan 12 (1) dan 13(1)

Perlembagaan Persekutuan perkara 135(2)(d)

Rayuan daripada: Guaman Sivil No S2–21–142 tahun 1995 (Mahkamah Tinggi, Kuala Lumpur)

Karpal Singh (Karpal Singh & Co) bagi pihak perayu-perayu.

Amarjeet Singh (Peguam Kanan Persektuuan, Jabatan Peguam Negara) bagi pihak responden-responden.

Alauddin HMR:

[1] Melalui satu writ saman dan penyata tuntutan bertarikh 1 April 1996 yang difailkan di Mahkamah Tinggi, Kuala Lumpur, perayu menuntut terhadap responden-responden relif-relif berikut:

(a) satu deklarasi bahawa pemecatan perayu dari perkhidmatannya menurut surat bertarikh 26 November 1992 oleh responden pertama adalah batal dan tidak sah (null and void) dan tidak berkesan (of no effect) dan perayu masih lagi seorang ahli perkhidmatan awam;

(b) satu siasatan (enquiry) untuk menentukan gaji, emolumen dan faedah-faedah lain yang perlu dibayar kepada perayu oleh responden-respoden;

(c) ganti rugi;

(d) faedah ke atas jumlah penghakiman untuk jangkamasa tertentu dan kadar tertentu yang difikirkan patut oleh mahkamah yang mulia itu;

(e) kos dan apa-apa relif selanjutnya yang difikirkan patut dan wajar oleh mahkamah yang mulia itu.

[2] Tuntutan perayu terhadap responden-responden seperti yang tersebut di alas adalah berdasarkan alasan-alasan berikut:

(a) penggantungan dan pemecatannya adalah tidak sah dari segi undang-undang oleh kerana ianya didasarkan kepada satu perintah tahanan yang sendirinya tidak sah dari segi undang-undang;

(b) semasa membuat perintah tahanan tersebut Timbalan Menteri Dalam Negeri bertindak luar dari bidang kuasanya;

(c) oleh kerana perayu hanya diserah dengan satu Borang I sahaja untuk membuat representasi kepada Lembaga Penasihat maka penahanannya adalah tidak sah dan tidak mengikut undang-undang.

[3] Di akhir perbicaraan, Yang Arif hakim telah memutuskan bahawa tuntutan perayu ditolak dengan kos.

[4] Justeru, perayu sekarang ini merayu kepada mahkamah ini terhadap keputusan tersebut.

FAKTA KES

[5] Perayu adalah seorang pemandu yang berkhidmat di Jabatan Peguam Negara.

[6] Pada 5 Ogos 1991, perayu telah ditahan di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan tersebut').

[7] Pada 28 Ogos 1991, Lembaga Tatatertib Perkhidmatan Awam bagi pegawai-pegawai Kumpulan 'D' Jabatan Peguam Negara di dalam mesyuaratnya telah memutuskan dan mengeluarkan perintah bahawa perayu digantung daripada menjalankan tugas-tugasnya berkuatkuasa mulai 5 Ogos 1991 sebagaimana yang diperuntukkan di dalam perintah am 34(2) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 ('Perintah-Perintah tersebut'). Perkara ini telah diberitahu kepada perayu melalui surat bertarikh 30 Ogos, 1991.

[8] Di dalam mesyuaratnya pada 6 Julai 1992, Lembaga Tatatertib yang sama setelah menimbangkan dengan teliti dokumen-dokumen serta maklumat-maklumat yang berkaitan, memutuskan bahawa perayu dikenakan hukuman buang kerja mengikut perintah am 36(i) Perintah-Perintah tersebut mulai tarikh Lembaga bersidang iaitu 6 Julai 1991. Perayu telah diberitahu tentang perkara ini melalui surat bertarikh 16 Julai 1992.

[9] Mengikut peraturan 12 (1) dan 13(1) Peraturan-Peraturan Lembaga Tatatertib Perkhidmatan Awam 1972 (PU(A)(48), Pindaan 1979) ('Peraturan-Peraturan tersebut'), perayu telah diberi peluang untuk membuat rayuan kepada Lembaga Rayuan Tatatertib melalui ketua jabatannya dalam tempoh 14 hari mulai dari tarikh penerimaan surat keputusan Lembaga Tatatertib ini.

[10] Perayu telah membuat rayuan kepada Lembaga Rayuan Tatatertib Perkhidmatan Awam Kumpulan 'D' Suruhanjaya Perkhidmatan Awam (responden pertama) melalui suratnya bertarikh 26 Julai 1992 terhadap keputusan Lembaga Tatatertib tersebut.

[11] Pada 19 Oktober 1992, Lembaga Rayuan Tatatertib telah membuat keputusan menolak rayuan perayu. Perkara ini diberitahu kepada beliau melalui surat bertarikh 26 November 1992.

ALASAN-ALASAN RAYUAN

[12] Di dalam hujah-hujahnya mempertikaikan keputusan Yang Arif hakim, peguam perayu, En Karpal Singh, menyatakan bahawa Yang Arif hakim itu telah tersalaharah dirinya secara serius dari segi undang-undang apabila beliau memutuskan yang perayu adalah disekat oleh had masa. Yang Arif hakim juga terkhilaf apabila tidak mengambil kira bahawa perayu hanya diberitahu melalui surat bertarikh 26 November 1992 yang rayuannya ditolak. Pemfailan guamannya pada 25 November 1995 dikatakan berlaku dalam tempoh had masa dan ianya sah.

[13] Walau bagaimanapun, En Karpal berhujah bahawa isu mengenai batasan had masa yang ditimbulkan responden-responden semasa perbicaraan merupakan perkara 'res judicata' kerana isu berkenaan telahpun dibangkitkan semasa pendengaran saman dalam kamar bertarikh 11 Jun 1995 yang difailkan oleh responden-responden di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 dan ditolak pada 20 Jun 1996 dengan tanpa apa-apa rayuan dibuat oleh responden-responden terhadap keputusan tersebut.

[14] Encik Karpal meneruskan hujah-hujahnya dengan menyatakan bahawa Yang Arif itu telah tersalaharah dirinya secara serius dari segi undang-undang apabila tidak memutuskan bahawa pembuangan kerja perayu adalah salah di sisi undang-undang dan menyalahi undang- undang kerana ia telah dibuat menurut suatu penggantungan di bawah perintah am 34(2) Perintah-Perintah tersebut.

[15] Hujahan peguam seterusnya menyentuh kekhilafan Yang Arif hakim itu yang tidak memutuskan bahawa proses membuat keputusan dari tarikh perayu digantungkan adalah cacat secara padah dan oleh itu pembuangan kerja perayu yang diakibatkannya juga tidak sah.

[16] Yang Arif hakim itu juga dikatakan terkhilaf apabila tidak memutuskan bahawa disebabkan penggantungan telah didasarkan atas perintah tahanan yang tidak sah, maka ketua jabatan yang bertindak atas perintah tersebut telah menyebabkan pembuangan kerja perayu juga tidak sah.

[17] Sekali lagi Yang Arif hakim itu dikatakan tersalaharah dirinya secara serius dari segi undang-undang apabila memutuskan bahawa perayu sepatutnya terlebih dahulu memohon satu perintah 'habeas corpus' untuk mendapat kebebasan. Kesahan tandatangan timbalan menteri yang terdapat pada perintah tahanan tersebut sepatutnya dibangkitkan di dalam permohonan tersebut. Selepas mendapat keputusan yang memihak kepadanya barulah boleh dijadikan keputusan itu sebagai asas untuk memulakan tindakan ini. Tanpa berbuat demikian terlebih dahulu perayu sekarang ini tidak boleh mempertikaikan kesahan perintah tahanan tersebut di mahkamah.

[18] Yang Arif hakim itu juga terkhilaf apabila memutuskan bahawa selagi perintah-perintah tersebut tidak menyatakan yang responden-responden sepatutnya memberi alasan-alasan mengenai keputusan mereka, maka keperluan itu tidak timbul.

[19] Peguam kanan persekutuan yang mewakili responden-responden dalam hujah-hujahnya, menyokong keputusan Yang Arif hakim itu. Beliau menyatakan bahawa keputusan Yang Arif itu adalah sah di segi undang-undang dan tidak menyalahi undang-undang. Keputusan tersebut harus dikekalkan.

PENDAPAT MAHKAMAH

[20] Sungguhpun peguam perayu membangkitkan beberapa alasan dalam hujahnya kami berpendapat bahawa di dalam rayuan ini apa yang menjadi persoalan pokok ialah mengenai kesahan perintah tahanan itu dan isu had masa.

[21] Menurut hujahan peguam perayu terdapat dua alasan mengapa beliau menyatakan perintah tahanan itu batal dan tidak sah. Pertama, Timbalan Menteri Dalam Negeri telah bertindak luar dari bidangkuasanya apabila mengeluarkan perintah tahanan tersebut. Kedua, perayu hanya diberi satu Borang I sahaja untuk membuat rayuan kepada Lembaga Penasihat.

[22] Adalah terlalu nyata bagi kami bahawa perintah tahanan itu adalah merupakan asas bagi 'perintah pembuangan kerja' yang dibuat oleh Lembaga Tatatertib.

[23] Perintah am 34 berbunyi demikian:

> 34(1) Where there has been made against an officer an order of detention, supervision, restricted residence …under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence … the Head of Department shall apply for a copy of the order from the appropriate authority and upon receipt thereof, shall submit a report together with full particulars of the officer's past record of service to the Appropriate Disciplinary Authority and the Head of Department shall recommend to the Disciplinary Authority whether the officer should be dismissed from the service, reduced in rank or otherwise dealt with depending on the degree of disrepute which the officer brings to the service.

A **[24]** Perintah am 35 pula memperuntukkan:

> 35(1) Notwithstanding anything in General Order 23, if after considering the report and documents submitted by the Head of Department in General Order 33 and 34(1), the Appropriate Disciplinary Authority is of the opinion that the officer merits dismissal or reduction in rank, it may forthwith direct accordingly; or if it is of the opinion that the
B officer should be inflicted with a lesser punishment or otherwise dealt with, the Disciplinary Authority may forthwith inflict upon the officer such lesser punishment or deal with him in such manner as it may deem fit.
>
> (2) If as a result of the lesser punishment

C **[25]** Jelas bagi kami bahawa mengikut peruntukan-peruntukan tersebut di atas Ketua Jabatan, Lembaga Tatatertib ataupun Lembaga Rayuan Tatatertib mempunyai tanggungjawab statutori untuk menerima seadanya perintah tahanan yang dimaksudkan. Mereka tidak ada kuasa atau tugas untuk mengkaji sama ada perintah tahanan tersebut sah ataupun tidak. Tugas Ketua Jabatan dan Lembaga Tatatertib
D adalah mengambil tindakan tatatertib sebaik sahaja mengetahui wujudnya suatu perintah tahanan. Mereka tidak diberi budi bicara untuk bertindak selainnya. Semasa perintah pembuangan kerja perayu dibuat iaitu pada 19 Oktober 1992 perintah tahanan tersebut masih berkuatkuasa (5 Ogos 1991 hingga 4 Ogos 1993) dan belum dibatalkan. Jadi tindakan Ketua Jabatan dan Lembaga Tatatertib di bawah
E peruntukan-peruntukan tersebut di atas adalah tepat dan betul dan tidak boleh dipertikaikan.

[26] Sekiranya perayu berhajat atau ingin mempertikaikan kesahan perintah tahanan tersebut maka beliau perlu mengambil tindakan yang sewajarnya di Mahkamah Tinggi sebelum mengambil tindakan ini. Hanya Mahkamah Tinggi
F mempunyai kuasa atas permohonan untuk memutuskan kesahan perintah tahanan tersebut bukannya Lembaga Tatatertib ataupun Lembaga Rayuan Tatatertib yang bertindak mengikut kehendak Perintah-Perintah tersebut. Apabila kesahan perintah tahanan dicabar orang yang sepatutnya dinamakan sebagai responden ialah Timbalan Menteri Dalam Negeri dan bukannya Suruhanjaya Perkhidmatan Awam.

G

[27] Mengenai peruntukan-peruntukan di bawah Perintah-Perintah tersebut Mahkamah Agung di dalam kes *Ghazi bin Mohd Saufi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114, menyatakan di ms 130):

H

> Similarly, in this case, we have examined the relevant provisions of Ch D of the 1980 General Orders, and it is beyond dispute that these provisions have been assiduously followed by the respondent, and having regard to all the authorities cited earlier on, an oral hearing or inquiry under the circumstances of this case was not justified. In dealing with Ch D of the 1980 General Orders we remind ourselves that we are dealing with General Orders that have legislative effect and we must guard ourselves against adding words into
I them which were never intended. In this regard, we found support in the passage of the judgment of Barwick CJ in *Twist v Randwick Municipal Council* at p 110:
>
> ... if the legislation has made provision for that opportunity [to be heard] to be given to the subject before his person or property is so affected, the court will not be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate. Thus, if the legislature has addressed itself to the

question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.

[28] Perlu diperjelaskan di sini bahawa tindakan pembuangan kerja yang diambil oleh Lembaga Tatatertib di dalam ke sini terhadap perayu adalah dibuat mengikut perintah am 34 dan 35 Perintah-Perintah tersebut yang diklasifikasikan sebagai 'Part III — Special Provisions' di mana perayu atau mana-mana pegawai dalam keadaan yang sama, tidak mempunyai 'right of being heard'. Perkara ini jelas diperuntukkan oleh perkara 135(2)(d) Perlembagaan Persekutuan yang menyatakan:

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard;

Provided that this clause shall not apply to the following cases:

(a) ...; or

(b) ...; or

(c) ...; or

(d) where there has been made against a member of such a service any order of detention; under any law relating to the security of the Federation or any part hereof, prevention of crime.

[29] Seperti yang telah kami nyatakan di awal tadi, di bawah peruntukan-peruntukan perintah am 34 dan 35, pihak-pihak berkenaan iaitu Ketua Jabatan atau Lembaga Tatatertib tidak mempunyai bidang kuasa mempersoalkan kesahan perintah tahanan tersebut tetapi sebaliknya dibekalkan dengan tanggungjawab bagi menentukan hukuman ke atas perayu berdasarkan kepada tahap kehinaan yang dibawa oleh perayu terhadap perkhidmatan. Tahap kehinaan pula bergantung kepada alasan-alasan di mana perintah tahanan itu dibuat.

[30] Tindakan yang diambil oleh perayu di dalam kes ini adalah tidak sesuai dan pada hemat kami merupakan penyalahgunaan proses Mahkamah. Perintah pembuangan kerja yang dibuat oleh Lembaga Tatatertib adalah didasarkan kepada perintah tahanan. Sekiranya perayu berjaya mencabar kesahan perintah tahanan tersebut maka sudah pasti perintah pembuangan kerja dengan sendirinya menjadi batal dan tidak sah. Tetapi malangnya di sini pada asasnya perayu tidak mencabar perintah tahanan tersebut. Perayu tidak berbuat demikian oleh kerana beliau disekat oleh had masa seperti yang dinyatakan dalam s 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 ('PAPA 1948'). Disebabkan kegagalannya mencabar kesahan perintah tahanan tersebut maka perayu secara berselindung cuba menjadikan tindakan yang sebenarnya mempertikaikan perintah pembuangan kerja, sebagai satu wadah bagi tujuan mencapai hasrat asalnya yakni mempertikaikan kesahan perintah tahanan tersebut. Sebab itulah kami anggap perbuatan perayu ini sebagai penyalahgunaan proses mahkamah. Tambahan lagi di dalam tindakannya, perayu telah gagat mempertikaikan kesahan perintah pembuangan kerjanya. Oleh yang demikian, keputusan itu kekal dan sepatutnya tidak ada lagi pemeriksaan kembali (review) ke atas keputusan tersebut.

[31] Bagi menyokong pendapat di atas, kami merujuk kepada kes *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153, di mana semasa memutuskan isu yang sama Mahkamah Persekutuan menyatakan (di ms 158):

> A public officer is entitled to impugn any allegation or accusation of any disciplinary breach against him by way of judicial review on the protection given by art 135 of the Federal Constitution which provides If the public officer succeeds in so impugning, any order of punishment, including an order of dismissal, can be declared invalid or void, and such order being so declared void, is deemed not to have been made at all or is deemed to have been only purportedly made previously. But if the public officer falls to so impugn, any order of punishment remains and there should be no further review on such order of punishment.

[32] Sekarang kami beralih kepada isu kedua iaitu sama ada tindakan perayu ini di sekat oleh had masa. Undang-Undang PAPA 1948 khususnya s 2(a) jelas menghadkan presiding terhadap Kerajaan kepada 36 bulan 'next after the act, neglect, or default complained of'. Selepas masa tersebut, Kerajaan Malaysia telah memperolehi satu hak statutori ('statutory right') sebagai pembelaan mutlak. Peruntukan s 2(a) tersebut amat jelas dan tidak memperuntukkan budi bicara mahkamah kerana ianya bersifat mandatori. Lagipun tindakan di bawah undang-undang tersebut tidak digalakkan kerana perayu sendiri yang melambat-lambatkan tindakan mahkamah sehingga saat-saat terakhir di mana masa dihadkan telah timbul.

[33] Berbalik kepada kes ini, perintah tahanan dibuat pada 5 Ogos 1991 dan masa luput pada 4 Ogos 1994. Keputusan menolak rayuan dibuat pada 19 Oktober 1992 dan masa luput pada 18 Oktober 1995. Manakala tindakan perayu difailkan pada 25 November 1995. Jelas di sini bahawa terdapat kelewatan selama lebih kurang 15 bulan 20 hari dari tarikh 4 Ogos 1994. Kami bersetuju dengan keputusan Yang Arif hakim itu bahawa dalam keadaan kes ini jelas tindakan perayu disekat oleh had masa.

[34] Di dalam kes *Alias bin Ismail v Hairuddin bin Mohamad & Anor* [1997] 3 MLJ 724, Mahkamah Rayuan berhadapan dengan isu had masa menyatakan (ms 728):

> The court has no discretion to set aside a defence of limitation. In *Riches v Director of Public Prosecutions* [1973] 1 WLR 1019, it was held that it was open to the defendant on an application to dismiss an action as being frivolous and vexatious or an abuse of the process of the court to show that the plaintiffs cause of action was statute barred and must inevitably fail for that reason.
>
> This had been followed by the Federal Court in *Tio Chee Hing & Ors v Government of Sabah* [1981] 1 MLJ 207 and *Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamad bin Yaacob & Ors; and connected cases* [1983] 2 MLJ 227.

[35] Seperkara lagi yang ditimbulkan peguam perayu ialah isu had masa yang dibangkitkan responden di dalam tindakan ini merupakan 'res judicata'. Ini kerana perkara yang sama telahpun dibangkitkan oleh responden di dalam saman dalam kamar mereka bertarikh 11 Jun 1995 yang difailkan bagi tujuan membatalkan tuntutan perayu di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980.

[36] Isu had masa yang ditimbulkan dalam saman dalam kamar responden adalah berkaitan soal bilakah masa mula berjalan bagi keputusan buang kerja. Adakah ia bermula dan tarikh keputusan dibuat iaitu 19 Oktober 1992 atau dari tarikh surat Lembaga Rayuan yang memaklumkan keputusan tersebut iaitu 26 November 1992. Tetapi permohonan responden ini ditolak oleh penolong kanan pendaftar. Ini bermakna ianya tidak berakhir di situ tetapi isu itu hendaklah dibicarakan. Isu bila masa berjalan untuk perintah tahanan dicabar masih terbuka. Jadi soal 'res judicata' tidak timbul.

[37] Isu terakhir yang agak kurang penting tetapi dibangkitkan oleh perayu ialah mengenai kegagalan responden-responden memberi sebab berhubung keputusan-keputusan mereka.

[38] Sayugia diingatkan bahawa di dalam kes ini, kita berhadapan dengan satu undang-undang atau statut yang tidak memperuntukkan tanggungjawab untuk memberi sebab atau alasan. Di dalam kes *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72, Mahkamah Persekutuan apabila memutuskan isu yang sama menyatakan (di ms 98):

> In considering the words in s 65(1)(c), it is clear that there is no express statutory duty imposed on the state authority to give reasons to the respondent. Insofar as the common law position is concerned, we adopt the proposition that was stated in *Marta Stefan v General Medical Council* [1999] 1 WLR 1293 that the trend of the law is towards giving reasons, but on a case by case basis. However the trend has not lost sight of the established position of the law that there is no general duty universally imposed on all decision makers. That being so, we agree with the submission of the learned State Attorney General that the question of giving reasons by the state authority to the respondent does not arise. Accordingly we hold that in exercise of the powers conferred upon the State Authority by s 65(1)(c) of the Act, the state authority is not required to give reasons.

KEPUTUSAN

[39] Berdasarkan alasan-alasan dan autoriti-autoriti yang telah kami nyatakan di atas, kami berpendapat bahawa tidak ada merit dalam rayuan ini. Justeru dengan sebulat suara, kami menolak rayuan ini. Kos kepada responden untuk ditaksirkan.

[40] Draf penghakiman ini telahpun saya kemukakan kepada rakan saya Raus Sharif, HMT yang sama-sama bersidang dan telah mendapat persetujuan beliau mengenainya. Rakan kami Abdul Aziz Mohamad HMR akan menulis penghakiman berasingan.

Abdul Aziz Mohamad JCA:

[41] The remedies sought by the appellant in the High Court are set out in para 1 of the grounds of judgment of my learned brother Alauddin JCA (now FCJ), the leading facts are set out in paras 5–11, and the provisions of general orders 34 and

35 of the Public Officers (Conduct and Discipline) (Cap D) General Orders 1980 under which proceddings leading to his dismissal were taken against the appellant are set out in paras 23 and 24.

[42] Although the principal remedy that the appellant sought was a declaration that the his dismissal was null and void, which would be a declaration against the disciplinary authority as to the soundness of its decision-making process, paras 6 and 8 (first sentence) of the statement of claim, in their combined effect, averred that the appellant's dismissal was unlawful because the detention order based on which disciplinary action was taken against him was unlawful. The averment, therefore, amounted to challenging the validity of the detention order, which was made by the Deputy Minister of Home Affairs under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. No question arose during the hearing of the appeal that the decision-making process of the disciplinary authority was 'fatally flawed', as contended in para 3 of the memorandum of appeal, or at all flawed. The process adhered faithfully to general orders 34 and 35. Of course if it could be established that the detention order was null and void, the dismissal of the appellant would be bad as having no basis, but not because the decision-making process in the disciplinary proceedings was flawed. The only question in the appeal was whether in his action in the High Court, which was directed against the disciplinary authority as to the soundness of its decision-making process, the appellant could challenge the validity of the detention order made by the Deputy Minister.

[43] The High Court judgment is reported in *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* [1999] 5 MLJ 678. The learned judge held, in effect, that the appellant could not challenge the validity of the detention order through his action (see p 685F).

[44] I too was of the view that the appellant could not challenge the validity of the detention order through the dismissal action that he brought, and it was on that view that I decided that the appeal be dismissed. In the first place, the action was not framed as an action to challenge the validity of the detention order, there being no prayer for a declaration that the detention order was null and void and the Deputy Minister not being made a party. In the second place, and as the overriding consideration, challenging the validity of the detention order in the action was an abuse of the process of the court because the appellant had failed to do so within the three years allowed by s 2(a) of the Public Authorities Protection Act 1948. The facts are as follows.

[45] The detention order was made and served on the appellant on 5 August 1991 and he was accordingly detained. He filed a writ of habeas corpus for his release, but before his application was heard he was released from detention and placed under restricted residence. While under detention, he had received, on 4 September 1991, the letter from the disciplinary authority dated 30 August 1991 informing him of his suspension from duty by reason of the detention order. As a result of his release from detention, his application for release by the writ of habeas corpus was struck out on 8 February 1992. On 18 July 1992, after his release from detention and while under restricted residence, he received the letter from the disciplinary authority dated

16 July 1992 informing him of his dismissal. He must have known, having had or having access to the services of solicitors, that if he wished to nullify his dismissal, he must nullify the detention order, and he had until 4 August 1994, the end of the three-year limit, in which to act. Although his application for release by habeas corpus had been struck out, he could have instituted an action for a declaration that the detention order was null and void, based on the need for such a declaration to nullify his dismissal. But he did not do so. His dismissal action was filed on 25 November 1995, more than fifteen months after the expiry of the limitation period for challenging the detention order. Had he filed an action to nullify the detention order within those fifteen months, limitation would have been set up against it and it would have stood in grave danger of being struck out or dismissed by reason of limitation. It was therefore an abuse of process to attempt to nullify the detention order through the dismissal action.

[46] I may mention that the only reply of the appellant's counsel to the senior federal counsel's argument about limitation as to the detention order was to say that it was irrelevant because the appellant's action was against his dismissal. This affirmation that the appellant's action was an action against dismissal was an implied denial that the action was an action against the detention order and yet the appellant expected the court to try the detention order and find that it was unlawful.

[47] There is another point about limitation that I ought to mention to clear up some confusion that appears to have arisen in this case. It is about limitation as to the dismissal itself and not as to the detention order. The defence of limitation in this respect was raised in para 8 of the statement of defence and it formed the basis on which the respondents had sought to have the appellant's action struck out. The disciplinary appellate authority had dismissed the appellant's appeal on 19 October 1992 but the appellant was only informed of the decision by a letter dated 26 November 1992. The respondents counted the three years from 19 October 1992 and contended that the action was statute-barred because the writ was filed on 25 November 1992, more than three years after 19 October 1992. The respondents' striking out application was dismissed and there was no appeal.

[48] From the notes of proceedings, I do not see that in the trial the respondents argued on the defence of limitation pleaded in paragraph 8 of the statement of defence. The senior federal counsel did, however, argue about limitation in relation to the detention order in order to submit that it was not open to the appellant to challenge in the dismissal action the validity of the detention order (see p 15 of the notes). But from p 18, it appears that at the close of submission, after the reply of the appellant's counsel, the judge asked the senior federal counsel: 'Was this issue of limitation pleaded?' The reply was in the affirmative, with a reference to para 8 of the statement of defence. If, in asking the question, what the judge had in mind was the issue of limitation as the senior federal counsel had submitted on, that is limitation as to the detention order, the answer was wrong, since the limitation pleaded in para 8 was limitation as to the dismissal.

[49] I cannot say whether that contributed to it, but the judge, going by the limitation period in respect of the detention order, that is 5 August 1991 to 4 August

1994, found that the appellant's dismissal action was caught by time bar (see pp 686H and 687F of the report). That appears to be another reason why he dismissed the action.

[50] In the appeal, the appellant's counsel argued against the finding, saying, correctly, that the judge had gone off on a tangent because, as I understood counsel to say, the period of limitation to bar the action as an action against the decision of the disciplinary authority must be reckoned from a date connected with the decision. To him, the date should be 26 November 1992, the date of the letter informing of the dismissal of the appellant's appeal and not 19 October 1992, the date of the decision. However, which of the two dates is correct was not a question that called for a decision in the appeal because the senior federal counsel did not seek to support the finding of the judge on the question of limitation or to argue in support of the defence of limitation in para 8 of the statement of defence. That defence appeared to have been a dead issue ever since the respondents failed in their application to have the action struck out by reason of limitation. The senior federal counsel began his submission in the appeal by accepting, after hearing the submission for the appellant, that the appeal concerned only one issue, whether the validity of the detention order could be challenged in the action.

Rayuan ditolak dengan kos.

Reported by Loo Lai Mee